THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 01.08.2007

\+ **WP (C) 17256/2004**

SIDHU SERVICE STATION ...Petitioner

- versus -

UNION OF INDIA AND ANR. ...Respondents

Advocates who appeared in this case:
For the Petitioner : Mr Sanjiv Behl with Ms Manmeet Arora and Mr Kunal Sabharwal,
For the Respondents : Mr A.D.N. Rao

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J

1. The petitioner is a family partnership firm consisting of the widow and sons of late Sardar Modan Singh. Initially, in 1957, late Sardar Modan Singh had given a piece of land on lease to Burmah-Shell which was the predecessor-in-interest of Bharat Petroleum Corporation Limited. Subsequently, in 1973, a Dispensing Pump and Selling Licence was granted to the petitioner firm. The said dealership was located on the very same land which had been leased out by late Sardar

Modan Singh.

2. The entire dispute in the present writ petition is with regard to the licence fee that can be charged by BPCL from the petitioner. Clause 2(a) of the Licence Agreement dated 12.2.1973 is the only Clause which requires consideration. The same reads as under:-

> "2. (a) The Licensees shall pay to the Company in respect of the Licence aforesaid a monthly Licence Fee of such sum as may be fixed by the Company which shall be payable in advance before the commencement of every month or as directed by the Company. The Company shall have the right to vary at any time this Fee payable by the Licensees upon giving to the Licensees not less than thirty days' notice in writing of its intention to do so."

According to the learned counsel for the petitioner, under the Licence Agreement, the respondent BPCL is entitled to charge a fixed monthly fee. They are not entitled to charge a fee based on turnover. He submitted that from 1973 to 1982 the fee that was being charged from the petitioner was a fixed monthly fee. However, on 17.1.1983, BPCL came out with a Circular whereby the entire mode of charging licence fee was altered from fixed fee basis to turnover basis. The circular was made effective from 1.10.1982. Though, at that point of time itself, the petitioner was aggrieved by the change in the mode of charging licence fee, no protest was raised. However, in 2004, the present writ petition

was filed challenging the change of licence fee on the basis of turnover. On 1.11.2004 when this matter came up for admission, this Court noted that the petitioner was not seeking the refund of the amount that had been recovered from the petitioner in the past. It was also recorded that the petition would be limited to payments made by the petitioner after 1.11.2004 and the same was made subject to the final outcome of the writ petition. The effect of the said order is that the scope of the writ petition is limited to the period after 1.11.2004.

3. The main prayer in the writ petition is that the respondent BPCL be directed to charge/claim licence fee in accordance with Clause 2 (a) of the Licence Agreement dated 12.2.1973 and to give adjustment of the licence fee which has been excessively charged in contravention of the said agreement in respect of the petrol pump at 5/5, G.T. Karnal Road, Near Subzi Mandi, Azadpur, Delhi. The ancillary prayer is that the respondent BPCL be directed to charge licence fee on fixed amount on monthly basis and not to charge licence fee on the basis of turnover. An alternative prayer has also been made but, in view of the decision that is being taken, it would not be necessary to note the same.

4. Reading the said Clause 2 (a) of the licence agreement, it is immediately clear that the licence fee is a monthly payment which has to be made by the petitioner to the oil company. Secondly, the licence fee is a fixed sum of money and the same has to be fixed by the oil company. Thirdly, the same has to be payable in advance before the commencement of every month or as directed by the company. Fourthly, the oil company has the right to vary the said fee at any time upon giving the licensee not less than 30 days notice in writing of its intention to do so. The contention of the learned counsel for the petitioner is that the Circular of 17.1.1983 is unilateral and is in contravention of Clause 2(a) of the Licence Agreement. By virtue of the said circular, the very basis of charging the licence fee had been changed from a fixed fee basis to a turnover fee basis. On the other hand, the learned counsel for the respondent, BPCL submitted that Clause 2(a) itself empowered the oil company to vary the licence fee at any time. It was also submitted that the Circular dated 17.1.1983 had been issued on the basis of directives received from the Ministry of Energy and changing the basis of the fee was well within its power under the Licence Agreement.

5. Having considered the arguments advanced by the counsel for

the parties, I am of the view that Clause 2(a) specifically speaks of a fixed licence fee. It is true that the oil company can vary the licence fee payable by the licensee but that can only be done upon giving the licensee not less than 30 days notice in writing of its intention to do so. In the present case, no such notice in writing has been given by the oil company to the petitioner. That apart, the very basis of charging licence fee has been altered. Clause 2(a), to my mind, contemplates only a fixed fee, whatever the amount may be. It does not contemplate a fee based on turnover. Because, had that been the case, the question of giving 30 days prior notice in writing would not have been necessary. The intention of the parties at the time of entering into the licence agreement is clear that a fixed fee was to be charged on a monthly basis and the same was not relateable to the turnover. Charging a licence fee on the basis of the turnover, would, in itself, mean that the fee was changeable from month to month and that would run counter to the very concept of a fixed fee. There is no doubt that alteration in the quantum of the fixed fee was contemplated by the said clause but it was contemplated in an infrequent manner inasmuch as provision had been made for giving 30 days prior notice in writing before any alteration in the fee was permissible.

6. Accordingly, the respondents are directed to charge the petitioner on the basis of a fixed fee and not to charge licence fee based on turnover. It shall be open to the respondent/BPCL to fix any reasonable fee under the said Clause 2(a) of the Licence Agreement and charge the same from the petitioner from time to time.

7. This writ petition is allowed to the extent indicated above with consequential benefits to the petitioner.

BADAR DURREZ AHMED
(JUDGE)

August 1, 2007
J